IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.1091 OF 2005
IN
WRIT PETITION NO.387 OF 2005

L. R. Solanki — Appellant
vs.
Air India Ltd. — Respondent

Mr.M.P.Dalvi i/b.Mr.S.V.Shirsat for the appellant.

Mr.S.K.Talsania with Mr.A.H.Gokhale i/b.M/s.M.V.Kini & Co. for the respondent.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 23rd December 2005

P.C.

Heard Mr.M.P.Dalvi, the learned counsel for the appellant and Mr.S.K.Talsania, the learned counsel for the respondent.

2. Twofold contention was advanced by the learned counsel for the appellant in assailing the order of the learned Single Judge. First, it was contended that there was shortfall in payment of wages to which the appellant was entitled to under Section 33(2)(b) of the Industrial Disputes Act, 1947. This argument is based on second proviso to clause (c) of sub-rule (4) of rule 14 of the Industrial Employment (Standing Orders) Act, 1946. The second submission of the learned counsel for the appellant was that the findings recorded by the

Enquiry Officer were perverse and that there was no legal evidence for proving the charges against the appellant.

3. None of the contentions has any merit.

4. Section 10A of the Industrial Employment (Standing Orders) Act, 1946 (Act of 1946) provides for payment of subsistence allowance during the suspension period. Such workman is entitled to subsistence allowance at the rate of fifty percent of the charges which the workman was entitled immediately preceding the date of suspension for the first 90 days of suspension and at the rate of seventy five percent of such wages for the remaining period of suspension if the workman is not directly attributable to delay in completion of disciplinary proceedings. There is no dispute that the appellant who was suspended during the pendency of disciplinary inquiry was paid the subsistence allowance as per Section 10A.

5. The submission on behalf of the appellant is that under second proviso to clause (c) of sub-rule (4) of rule 14, the appellant was entitled to the same wages as if he was not placed under suspension after four days of suspension.

6. Clause (c) of sub-rule (4) of rule 14 reads thus:

> "(c) If on the conclusion of the inquiry or, as the case may be, of the criminal proceedings, the workman has been found guilty of the charges framed against him and it is considered, after giving the workman concerned a reasonable opportunity of making representation on the penalty proposed, that an order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank would meet the ends of justice, the employer shall pass an order accordingly:
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> . . Provided that when an order of dismissal is passed under this clause, the workman shall be deemed to have been absent from duty during the period of suspension and shall not be entitled to any remuneration for such period and the subsistence allowance already paid to him shall not be recovered:
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> . . Provided further that where the period between the date on which the workman was suspended from duty pending the inquiry or investigation or trial and the date on which an order of suspension was passed under this clause exceeds four days, the workman shall be deemed to have been suspended only for four days or for such shorter period as is specified in the said order of suspension and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension, after deducting the subsistence allowance paid to him for such period:
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> . . Provided also that in the case of a workman to whom the provisions of clause (2) of Article 311 of the Constitution apply, the provisions of that article shall be complied with."

7. Second proviso is not an independent provision but has to be read as an exception to clause (c). What is

provided in clause (c) is that interalia on the conclusion of the disciplinary enquiry, the employer may pass an appropriate order of dismissal or suspension or fine or stoppage of annual increment or reduction in rank as would meet the ends of justice. Where the period between the date on which the workman was suspended from duty pending the enquiry and the date on which the order of suspension was passed exceeds four days, the workman shall be deemed to have been suspended only for four days and for the remaining period he shall be entitled to the same wages as he would have received if he had not been placed under suspension. On its face the said proviso has no application because in the instant case, upon completion of the enquiry, the order of appellant's dismissal from service was passed and not the punishment by way of suspension. The reliance, thus, placed on second proviso by the appellant is misconceived. That is what the learned Single Judge has held. In this view of the matter the view of the learned Single Judge cannot be faulted.

8. As regards the submission of the learned counsel for the appellant that the finding of the Inquiry Officer suffers from perversity, suffice it to say that there is evidence on record that establishes the charges levelled against the appellant. As a matter of fact, the charges against the appellant are proved by the defence's own

witness viz.S.V.Godambe who was the delinquent workman's supervisor at the relevant time. It is true that S.V.Godambe also faced the disciplinary enquiry, but that did not necessarily require his evidence to be rejected by the Inquiry Officer if from his evidence the charges against the appellant could be proved. Inter alia, the charge against the delinquent workman was quite serious and that was that in the course of employment, the delinquent utilised his privilege of entering into aircraft and airport for removing contraband gold worth about Rs.39 lacs in international monetary value and Rs.49 lacs in local monetary value. During the evidence, the Enquiry Officer found as a fact that the delinquent was on duty on October 30, 1993. It was also found as a fact that the delinquent entered into the aircraft VT-EHQ. Then there is also evidence which establishes that on entering into the aircraft the delinquent removed gold bars which were sealed in the toilet and he delivered the contraband gold at Vinjuda's residence. At the instance of the delinquent, at Vinjuda's residence contraband was recovered. Thus, it cannot be said that the findings recorded by the Inquiry Officer suffer from any perversity. As a matter of fact, the National Industrial Tribunal committed error in declining to grant approval under Section 33(2)(b) of the Industrial Disputes Act. The learned Single Judge cannot be said to have erred in setting aside the order

of the National Industrial Tribunal.

9. No case for interference is made out.

10. Appeal is dismissed in limine.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)